

Application No. 10/763,767
AMENDMENT AND RESPONSE dated March 23, 2006
Reply to Office Action of February 21, 2006

REMARKS

After entry of the present amendment, claims 1-15 are pending. Claims 1-11 were rejected under 35 U.S.C. § 112, second paragraph as being indefinite. Claims 1-7 were rejected under 35 U.S.C. § 102(e) as being anticipated by US 6,698,332 ("Kollep"). Claims 8-11 are allowable if rewritten to overcome the rejections under 35 U.S.C. § 112, second paragraph and to include all of the limitations of the base claim and any intervening claims. Claims 12 to 15 are new claims. We request reconsideration and allowance for the reasons set forth below.

I. Rejection of Claims 1-11 under 35 U.S.C. § 112, Second Paragraph

Claims 1-11 were rejected under 35 U.S.C. § 112, second paragraph as being indefinite. Independent claim 1 includes sufficient structure (*i.e.*, a closure mechanism, an upper part, or a lower part) to exert the recited compressive force such that the claim is not indefinite. Such elements and compressive force are described with respect to various embodiments at pages 44 through 48.

II. Rejections of Claims 1-7 under 35 U.S.C. § 102(e)

Claims 1-7 were rejected under 35 U.S.C. § 102(e) as being anticipated by Kollep.

Independent claim 1 recites a closure mechanism that contacts a top surface and a bottom surface of a beverage cartridge at or near the center of the cartridge to exert a compressive force greater than 50N. The recited compressive force must be evaluated and considered just like any other claim limitation. (See Manual of Patent Examining Procedure in Section 2173.05(g)) (stating "[a] functional limitation must be

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evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used.") As discussed above, claim 1 includes sufficient structure to exert such compressive force.

The device of Kollep is designed for use with flexible bags where there is no need to apply forces to the center of the bag. Kollep fails to disclose any application of compressive force of greater than 50N or of any other magnitude. Accordingly, Kollep does not anticipate claim 1.

III. Allowance of Claims 8-11

The Office Action indicated that claims 8-11 are allowable if rewritten to overcome the rejections under 35 U.S.C. § 112, second paragraph and to include all of the limitations of the base claim and any intervening claims. Claims 8 to 11 have been rewritten as new claims 12 to 15 and are believed to be allowable for the reasons discussed above in section I.

IV. Conclusion


For the reasons set forth above, reconsideration and allowance of all claims are respectfully requested.

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The Commissioner is hereby authorized to charge any additional fees which may be required with respect to this communication, or credit any overpayment, to Deposit Account No. 06-1135.

Respectfully submitted,
FITCH, EVEN, TABIN & FLANNERY

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